

Decision 01-11-023 November 8, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking into Distributed  
Generation.

Rulemaking 99-10-025  
(Filed October 21, 1999)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

This decision grants Aglet Consumer Alliance (Aglet) \$15,476.04 in compensation for its contribution to Decision (D.) 01-07-027.

**1. Background**

The purpose of this rulemaking is to develop policies and rules to facilitate deployment of distributed generation in California. As part of this process, we are reviewing our regulatory framework to ensure that unnecessary barriers to deployment of distributed generation are removed.

The Commission approved D.01-07-027 on July 12, 2001. The decision adopted interim standby rate design policies for onsite generation facilities, made various findings and conclusions, and ordered Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) to file standby rate applications. The utilities have since filed the required applications.

**2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent

(NOI) to claim compensation within 30 days of the prehearing conference (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. Aglet timely filed its request for an award of compensation. Section 1804(c) also requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into

account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

### **3. NOI to Claim Compensation**

On December 24, 1999, Aglet timely filed its NOI after the first PHC. Aglet was found to be eligible for compensation in this proceeding by an administrative law judge's (ALJ) ruling dated January 20, 2000. The same ruling required an amendment to the NOI to identify the issues Aglet intended to focus on, but found that Aglet had demonstrated significant financial hardship. Aglet filed an amended NOI on February 4, 2000.

### **4. Contributions to Resolution of Issues/Overall Benefits of Participation**

A party may make a substantial contribution to a decision in one of several ways.<sup>1</sup> It may offer a factual or legal contention upon which the Commission relied in making a decision.<sup>2</sup> Or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.<sup>3</sup> A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.<sup>4</sup> The

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<sup>1</sup> Pub. Util. Code § 1802(h).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Commission has provided compensation even when the position advanced by the intervenor is rejected.<sup>5</sup>

In addition, in D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo. at 31-33, and Finding of Fact 42.) In that decision we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

To begin this review, we note that Aglet represented customer interests (residential and small commercial customers) that would otherwise have been underrepresented in the proceeding. Aglet participated actively in the hearings and argument that led to D.01-07-027. Aglet served testimony, cross-examined witnesses, and filed briefs and comments. The Utility Reform Network (TURN) also represented residential and small commercial customers, but Aglet and TURN concentrated on different issues in the proceeding. Aglet focused on stranded costs, inclusion of embedded costs in standby rates, and localized rates. TURN focused on technology development, planning processes, and various rate

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<sup>5</sup> D.89-03-096 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

design issues. Aglet's work in the proceeding complements and supplements the efforts of TURN and other parties, but does not duplicate them.

With respect to stranded costs, D.01-07-027 did not adopt or discuss the utility stranded cost proposals because it found there was "no evidence that distributed generation deployment will soon cause significant stranded distribution costs." (D.01-07-027, discussion, slip op. at 56, Finding of Fact 17, slip op. at 79.) In its request for an award of compensation, Aglet demonstrates that this finding relies directly on Aglet's showing (in both briefs and comments on the proposed decision) during the case. Additional discussion in the body of D.01-07-027 also clearly draws from Aglet's showing and comments. Aglet made a substantial contribution to the discussion of stranded costs and Finding of Fact 17.

With respect to the elements of standby charges, D.01-07-027 cites its agreement with Aglet's position "that standby charges should be based on embedded, not incremental, costs of service, consistent with the manner in which rates are calculated for other distribution services." (D.01-07-027, discussion, slip op. at 67, Conclusion of Law 18, slip op. at 82, Ordering Paragraph 1(j), slip op. at 84.) In addition, Aglet supported the collection of a fair share of public purpose program funding in standby rates and its witness was cross-examined on this subject. The Commission directed the utilities to include collection of public purpose costs in their standby rate proposals, but it did not attribute that outcome to any specific party. (D.01-07-027, discussion, slip op. at 64, Ordering Paragraph 1(n), slip op. at 84.) Aglet made a substantial contribution on these issues.

As described in Aglet's request for compensation, Aglet separated time spent on other issues, for example, time spent on localized rates,

performance-based ratemaking incentives, interconnection costs, fixed vs. usage charges, pricing flexibility, and minor corrections and revisions, from its three major issues. The Commission did not address many of these issues in

D.01-07-027. As detailed in its compensation request:

“Aglet supported standby charges with both demand and variable components. (Aglet opening brief, pp. 7-8.) The Commission allowed for fixed and usage charges in standby rates. (D.01-07-027, discussion, slip op. at 63-64, Conclusions of Law 12-15, slip op. at 81.) The Commission also adopted five out of six minor corrections and revisions proposed by Aglet.” (Aglet Compensation Request, p. 7.)

Because some of the other issues it addressed were not decided in D.01-07-027, Aglet has deferred 80% of its costs related to other issues pending additional Commission decisions on these issues. Aglet also deferred all of the time it spent on implementation issues, which were not addressed in D.01-07-027.

Because the Commission did not adopt any revenue requirement, revenue allocation method or specific rate design, it is difficult to assign specific ratepayer savings to Aglet’s contributions in the proceeding. Assigning a dollar value to intangible benefits is impractical, if not impossible. Nonetheless, it is clear that, at a minimum, ratepayers have benefited from Aglet’s contributions on stranded cost issues and use of embedded rather than incremental costs because of the cost implications of the utility proposals that were not adopted.

Overall, Aglet made substantial contributions to D.01-07-027. The Commission finds that Aglet’s participation in this proceeding has been productive, and that the benefits of Aglet’s contributions to D.01-07-027 justify compensation.

## 5. Reasonableness of Requested Compensation

Aglet requests \$15,566.04 as follows:

47.2 hours professional time, at \$220 per hour	\$10,384.00
33.1 hours travel and compensation time, at \$110 per hour	\$ 3,641.00
Copies	\$ 646.00
Postage	\$ 503.20
Travel (vehicle mileage, bridge tolls, and parking)	\$ 391.84
<b>Total Request</b>	<b>\$15,566.04</b>

### 5.1 Hours Claimed

Aglet documented the claimed hours by presenting a daily breakdown of hours with a brief description of each activity. We note that Aglet has correctly reported travel hours separately from professional time. The hours claimed are reasonable.

### 5.2 Hourly Rate

Aglet requests an hourly rate of \$220 for professional work performed during 2000 and 2001, and one half of that rate for travel time associated with professional work and for preparation of this compensation request, consistent with Commission practice. In D.01-08-050, we awarded Weil compensation at \$220 per hour for professional work and \$110 per hour for travel time for work performed in 2000. We follow D.01-08-050 and find that an hourly rate of \$220 for professional work and \$110 for travel time for work performed in 2000 by Weil in this proceeding is reasonable. The same rate for work performed in 2001 is also reasonable.

Some of the hours claimed by Aglet, specifically, 2.2 hours of professional time and 4.6 hours for travel time, are for work performed in 1999. The Commission has previously awarded Weil compensation at \$200 per hour for professional work and \$100 per hour for travel time for work performed in 1999 (D.00-03-051). We adopt an hourly rate of \$200 for professional work and \$100 for travel time for work Weil performed in 1999.

### 5.3 Other Costs

Other costs necessary for participation in this proceeding were out-of-pocket expenses for copies, postage, and travel amounting to \$1,541.04 or 9.9 % of the total compensation request. Due to deferral of Aglet's costs for issues not addressed in D.01-07-027, the percentage of the total request is higher than usual. The total amount for other costs is reasonable considering the duration and substance of the proceeding.

### 6. Award

We award Aglet \$15,476.04, calculated as described above and detailed below.

2.2 hours professional time, at \$200 per hour	\$ 440.00
45.0 hours professional time, at \$220 per hour	\$ 9,900.00
4.6 hours travel and compensation time, at \$100 per hour	\$ 460.00
28.5 hours travel and compensation time, at \$110 per hour	\$ 3,135.00
Copies	\$ 646.00
Postage	\$ 503.20
Travel (vehicle mileage, bridge tolls, and parking)	\$ 391.84
<b>Total Awarded</b>	<b>\$15,476.04</b>



Because PG&E, SDG&E, and SCE are the subjects of the Commission's orders issued in D.01-07-027, the three utilities should pay the award of compensation. Aglet suggests allocations of costs among the utilities based on jurisdictional sales for year 2000 and we will adopt that allocation.

Consistent with previous Commission decisions, we will order that interest be paid on the award amounts (calculated at the three-month commercial paper rate), commencing for Aglet on November 27, 2001 (the 75<sup>th</sup> day after Aglet filed its compensation request), and continuing until the utilities make full payment of the award.

As in all intervenor compensation decisions, we put Aglet on notice that the Commission staff may audit its records related to this award. Thus, Aglet must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

## **7. Comments on Draft Decision**

This is a compensation decision per § 1801 (Rule 77.7(f)(6)). Accordingly, the otherwise applicable 30-day period for public review and comment is being waived.

## **Findings of Fact**

1. Aglet has made a timely request for compensation for its contribution to D.01-07-027. Aglet has demonstrated significant financial hardship.
2. Aglet contributed substantially to D.01-07-027.

3. For work performed by Weil, an hourly rate of \$200 per hour, which has already been approved by the Commission in D.00-03-051 for work in 1999, is reasonable.

4. For work performed by Weil, an hourly rate of \$220 per hour, which has already been approved by the Commission in D.01-08-050 for work in 2000 and 2001, is reasonable.

5. The miscellaneous costs incurred by Aglet are reasonable.

### **Conclusions of Law**

1. Aglet has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.

2. Aglet should be awarded \$15,476.04 for its contribution to D.01-07-027.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that Aglet may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. Aglet Consumer Alliance (Aglet) is awarded \$15,476.04 in compensation for its substantial contribution to Decision 01-07-027.

2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) shall pay Aglet a total of \$15,476.04 in proportion to their respective 2000 jurisdictional revenues within 30 days of the effective date of this order. PG&E, SCE, and SDG&E shall also pay interest on the award at the rate earned on prime, three-

month commercial paper, as reported in Federal Reserve Statistical Release G.13, beginning November 27, 2001 and continuing until full payment is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated November 8, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.